



## **Floor Prep**

**H.R. 476 - To amend title 5, United States Code, to make noncreditable for Federal retirement purposes any Member service performed by an individual who is convicted of any of certain offenses committed by that individual while serving as a Member of Congress, and for other purposes**

### **Floor Prep**

H.R. 476 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Representative Nancy Boyda (D-KS) on January 16, 2007 and has not been considered by any committee.

H.R. 476 is expected to be considered on January 22, 2007.

## **Background**

### Federal Employee Retirement System

The Federal Employee Retirement System (FERS) is a three-part retirement systems for Members and federal officials that consists of Social Security Benefits, a Basic Benefit Plan, and a Thrift Savings Plan. FERS serves as the pension annuities that Members receive monthly upon retirement.

Social Security provides monthly payments if a Member is retired and has reached the age of 62. Social Security offers 3 different benefits: a monthly benefit to a Member who becomes disabled, a monthly benefit for eligible survivors, and a lump sum benefit upon a Member's death to eligible survivors.

The Basic Benefit Plan is a monthly payment based on the Member's pay and length of service. A formula is used to compute the payments under the Basic Benefit Plan. The Government averages the highest 3 consecutive years of basic pay. This "high-3" average pay, together with the employee's length of service, is used in the benefit formula.

The Thrift Savings Plan is a tax-deferred retirement savings and investment plan that acts like a 401 (k) plan offered in the private sector.

## Current Law

Under current Federal law, Members of Congress (and staff) are subject to the forfeiture of their pension annuities if they are convicted of certain felonies relating to national security offenses.

In response to the Alger Hiss cases, Congress passed what is commonly known as the “Hiss Act” (Public Law 83-769). The Hiss Act defined certain felonies that, if convicted, Members would lose their pensions.

The Hiss Act adopted in 1954 had a long list of offenses, many of which were unrelated to national security related crimes. Most of the convictions that resulted from the Hiss Act were for minor felonies and postal law infractions. As a result, many Members, Federal officers, and their families lost their pension annuities.

Congress amended the Hiss Act in 1961 to strengthen the provisions relating to national security issues and reduced or eliminated provisions applicable to non-security issues. The changes made in 1961 also made retroactive annuity benefits to Members who had lost those benefits based on offenses unrelated to national security issues.

Offenses that require forfeiture of pension annuities in the 1961 revisions include:

- Harboring or concealing persons;
- Gathering, transmitting, or losing defense information;
- Gathering or delivering defense information to aid foreign government;
- Disclosure of classified information;
- Activities of espionage and censorship;
- Activities of treason;
- Activities of sabotage;
- Activities of rebellion or insurrection;
- Activities of seditious conspiracy;
- Activities of advocating overthrow of government;
- Activities affecting armed forces generally and during war;
- Recruiting for service against the United States;
- Enlistment to serve against the United States;
- Transmitting classified (atomic) energy documents;
- Perjury in court relating to activities while in office.

Members of Congress and federal officials who lose their pension benefits as a result of violating federal law can retrieve their contributions to the retirement fund, and would not lose their own earnings and savings through the Thrift Savings Program.

## The Congressional Forfeiture Act of 1996

In the 104<sup>th</sup> Congress, Rep. Randy Tate (R-WA-9) introduced the Congressional Forfeiture Act of 1996 (H.R. 4011). H.R. 4011 amended Title 5 of the United States Code to provide that if a Member of Congress is convicted of certain felonies, that Member shall not be eligible for retirement benefits based on that individual's service as a Member.

The bill passed the House of Representatives by a recorded vote of 391 – 32 ([Roll no. 443](#)) on September 26, 1996. The Senate did not act on the bill.

	<a href="#">YEAS</a>	<a href="#">NAYS</a>	<a href="#">PRES</a>	<a href="#">NV</a>
REPUBLICAN	225	2		7
DEMOCRATIC	165	30	1	2
INDEPENDENT	1			
<b>TOTALS</b>	<b>391</b>	<b>32</b>	<b>1</b>	<b>9</b>

H.R. 4011 stated that a breach of public trust by a Member of Congress was a serious offense that should have consequences and taxpayers should not pay for the retirement benefits of Members who have breached the public trust. The bill declared that the Member must have committed the offense while serving as a Member, the offense must have been directly related to the individual's service as a Member, and the offense had to be committed during the 105<sup>th</sup> Congress or later to revoke a Member's pension.

Pursuant to the bill, certain specified felonies were included on the list of felonies that resulted in forfeiture of Federal retirement annuities if a Member was convicted. They include:

- Bribery of public officials and witnesses;
- Compensation to Members, officers, and others in matters affecting the Government;
- Practice in United States Court or Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress;
- Restrictions on former officers, employees, and elected officials of the executive and legislative branch;
- Officers and employees acting as agents of foreign principals;
- Conspiracy to defraud the Government with respect to claims;
- False, fictitious, or fraudulent claims;
- Conspiracy to commit offense or to defraud the United States;
- Expenditures to influence voting;
- Promise of appointment by candidate;
- Solicitation of political contributions;
- Intimidation to secure political contributions;
- Solicitation of political contributions while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person;

- Conversion of public money, property, or records for private use;
- Statements or entries that are knowingly false;
- Frauds and swindles;
- Fraud by wire, radio, or television;
- Influencing or injuring officer or juror;
- Interference with commerce by threats or violence;
- Interstate and foreign travel or transportation in aid of racketeering enterprises;
- Illegal activities;
- Attempt to evade or defeat tax.

*\*Note: On January 8, 2007, Rep. Mark Kirk introduced the Congressional Integrity and Pension Forfeiture Act of 2007 (H.R. 14). As introduced, this bill contains the identical languages as the Congressional Forfeiture Act of 1996.*

### Lobbying Accountability and Transparency Act of 2006

In the 109<sup>th</sup> Congress, Rep. David Dreier (R-CA-26) introduced the Lobbying Accountability and Transparency Act of 2006 (H.R. 4975).

H.R. 4975 passed the House of Representatives by a recorded vote of 219-217 ([Roll no. 119](#)) on May 3, 2006.

	<a href="#">AYES</a>	<a href="#">NOES</a>	<b>PRES</b>	<a href="#">NV</a>
REPUBLICAN	209	20		2
DEMOCRATIC	8	192		1
INDEPENDENT		1		
<b>TOTALS</b>	<b>217</b>	<b>213</b>		<b>3</b>

The Senate passed the 527 Reform Act of 2006 (S.2349) on March 29, 2006. Following passage of H.R. 4975, the Senate disagreed to the House amendments to the bill, requested a conference, and appointed conferees.

Section 601 of H.R. 4975 sought to strengthen the Federal laws revoking a Member's pension benefit if that Member were to be convicted of certain felonies. H.R. 4975 required that the felony must have been directly related to the individual's service as a Member.

The Act strips Members of Congressional pensions if convicted of:

- Bribery of public officials
- Acting as an agent of foreign principals
- Conspiracy to commit bribery or defraud the United States

Under this provision, spouses and dependents were allowed to keep their entitlements as long as they were not involved in the infraction.

## Summary

H.R. 476 would amend the CSRS (Section 8332 of Title 5 USC) and the FERS (Section 9411 of Title 5 USC) to revoke Member pensions if they are convicted of certain felonies.

For Members to lose their pensions, the illegal act needs to be committed during the individual's time as a Member and it must directly relate to official duties. The bill stipulates that in order for a Member's pension to be revoked the felony must be committed after the enactment of this bill.

The bill strengthens federal law by revoking Members' pensions if they are convicted of certain felonies relating to:

- Bribery of public officials (section 201 of title 18)
- Acting as an agent of foreign principals (section 219 of title 18)
- Conspiring to commit bribery or defraud the United States (section 371 of title 18)

*\*Note: These first three provisions are identical to the provisions of H.R. 4975, which passed the House of Representatives on May 3, 2006.*

- Conspiracy to violate the post-employment restrictions (1 year ban on lobbying) (section 207 of title 18)
- Committing perjury in relationship to the aforementioned felonies (section 1621 of title 18)

*\*Note: On January 8, 2007, Rep. Mark Kirk introduced the Congressional Integrity and Pension Forfeiture Act of 2007 (H.R. 14). As introduced, this bill includes the same penalty for perjury.*

A Member is ineligible to receive a federal pension when a final conviction is handed down.

H.R. 476 allows for a Member to receive back personal contributions to their own Thrift Savings Plan. The bill also allows, in certain circumstances, for a Member's spouse or dependants to receive pension payments if a Member is convicted of specified felonies. The Office of Personnel Management is charged with developing regulations to carry out this program.

*\*Note: These two provisions are identical to the provisions in H.R. 4975, which passed the House of Representatives on May 3, 2006.*

Article I, Section 9, clause 3 provides that "No Bill of Attainder or ex post facto Laws shall be passed." This bill only denies pensions to Members that commit the felonies after the enactment

of this bill because of Constitutional concerns. In *Fletcher V. Peck*, Chief Justice Marshall stated that an ex post facto law “is one which renders an act punishable in a manner in which it was not punishable when it was committed.”

### Senate Actions

The Senate passed S.1, a bill to provide greater transparency in the legislative process, on January 18, 2007. Senator John Kerry (D-MA) offered an amendment that was agreed to by a recorded vote of 87 – 0 ([Record Vote Number: 8](#)).

The amendment denies Federal pensions to Members of Congress who are convicted of:

- Bribery of public officials and witnesses
- Conspiracy to defraud the United States
- Perjury in falsely denying the commission of bribery or conspiracy
- Subornation of perjury committed in connection with the false denial or false testimony of another individual.

### **Additional Information**

#### [Federal Employee Retirement System](#)

### **Staff Contact:**

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